

Mandatory Reporting

This module is designed to develop service providers' understanding of West Virginia law regarding mandatory reporting of sexual violence against adults who are considered "incapacitated."

Key Points

- In West Virginia, designated persons are mandatory reporters of suspected abuse or neglect of adults who are incapacitated, or of emergency situations where adults who are incapacitated are at imminent risk of serious harm. These persons include: medical, dental and mental health professionals; Christian Science practitioners; religious healers; social service workers; law enforcement officers; humane officers; state or regional ombudsmen; and employees of nursing homes or other residential facilities.
- Abuse, neglect or an emergency situation involving an adult who is incapacitated should be reported to the local Department of Health and Human Resources (DHHR), Adult Protective Services (APS), or the 24-hour hotline provided for this purpose (800-352-6513). If you suspect a crime has been committed, contact the local law enforcement agency. If you are uncertain, you can contact law enforcement and they, in turn, may direct you to DHHR/APS.
- When you call DHHR to make a report, be prepared to provide (as it is available) the name, address and phone number of the alleged victim; name, address and phone number of the alleged perpetrator; your name, phone number and address (although anonymous reports are accepted); information on the physical, cognitive and emotional functioning of the victim and the perpetrator; and the reason for your concern.¹
- The initial verbal report to DHHR should be followed within 48 hours with a written report. DHHR's *APS Mandatory Reporting Form* can be used for this purpose or your agency can use its own form. In addition, copies of the report are to be distributed by the reporter to various parties (law enforcement/prosecution, ombudsman program, OHFLAC, long-term care facility administration, and/or medical examiner/coroner), depending on the circumstances of the allegations.

B5. Mandatory Reporting

Purpose

It may not always be clear to service providers who work with individuals with disabilities if they are mandated by law to report sexual violence, which situations require a report, to whom they are required to report and how to go about reporting. This module is designed to develop service providers' knowledge of West Virginia law regarding mandatory reporting of sexual violence against adults who are considered incapacitated. For purposes of mandatory abuse reporting, an adult is considered "incapacitated" when s/he cannot independently conduct daily life sustaining activities due to a physical, mental or other infirmity.²

This module also encourages discussion on how to ensure that agency staff members have a full understanding of what the law mandates, including timelines for reporting, under what

circumstances to report and the reporting procedures. (For supplemental information on this topic, see *Sexual Violence 101. Confidentiality and Disability 101. Guardianship and Conservatorship.*)

Given that the definition of “incapacitated adult” for mandatory reporting is very broad, including physical and mental infirmities, it is important to be very clear that this definition only applies under the mandatory reporting laws. The definition of “incapacitated adult” may be different, and more narrow, in other contexts.

Objectives

Those who complete this module will be able to:

- Discuss state mandated provisions for mandatory reporting and identify who are considered mandatory reporters of abuse, neglect or an emergency situation³ involving individuals the state refers to as “incapacitated adults;”
- Determine if they are mandatory reporters and how to make a report;
- Understand the process for submitting their agency’s West Virginia APS mandatory reporting form;
- Discuss policies and practices regarding mandatory reporting of different partnering agencies; and
- Discuss ethical issues related to mandatory reporting and the consequences of non-compliance for mandatory reporters.

Part 1: CORE KNOWLEDGE

What is a mandatory reporter?

For the purpose of this module, “mandated reporters” refers to professionals who, in the course of their work, are required to report or cause a report to be made whenever mistreatment of an adult who is incapacitated has been observed or is suspected, or if an adult who is incapacitated is at imminent risk of serious harm.⁴

Mandated reporters are designated by law to help protect persons who may not be able to protect themselves. Mandated reporting is a complicated issue, since all professionals are not well trained on this issue. *First and foremost, you need to talk with your supervisor and determine if you are a mandated reporter under West Virginia law.*

What state laws relate to mandatory reporting of incidents of sexual violence involving adult victims who are incapacitated?⁵

In addition to the general provisions related to the reporting of abuse, neglect or an emergency situation involving an adult who is incapacitated, the *West Virginia Code (WVC§9-6-9)* also identifies various individuals who are mandatory reporters.⁶ If any of these individuals believe, suspect or know that an adult who is incapacitated is being subjected to, or has the potential to be subjected to abuse, neglect or an emergency situation, they **must** immediately report the

circumstances to the local DHHR. **The following are identified as mandatory reporters:**

- Medical, dental and mental health professionals;
- Religious healers and Christian Science practitioners;⁷
- Social service workers, including those employed by the DHHR;
- Law enforcement officers;
- Humane officers;⁸
- State or regional ombudsmen;⁹ or
- Any employee of a nursing home or other residential facility.

These requirements apply without regard to where victims reside (e.g., their own home, home of another individual or an institutional/facility setting). As stated in *WVC§9-6-14*, failure to make such a report can be punishable by a fine of up to \$100 or imprisonment of up to 10 days. Note also that reporters are provided with immunity from civil or criminal liability if the suspected sexual assault/abuse is unsubstantiated.¹⁰

FYI—Sexual violence victims, as well as their families and caregivers, may be reluctant to report. Keep in mind that the safety of victims is your primary responsibility and the reason you are required to report. It is good practice to explain your reporting requirements to victims during your initial interactions with them so they fully understand their options for assistance as well as possible unintended repercussions that could result from reporting.¹¹ To the extent possible, help address any concerns they may have about reporting (e.g., fear of placement in an assisted living facility).

FYI—This module focuses on adults with disabilities who are incapacitated. As detailed in the next section, the reporting process for adult victims differs from cases of suspected or observed mistreatment of a *minor*, for which mandatory reporters in West Virginia (according to *WVC §49-6A-2*) include: medical, dental or mental health professionals, religious healers and members of the clergy, Christian Science practitioners, social service workers, school teachers and other school personnel, child care or foster care workers, humane officers, emergency medical services personnel, peace officers or law enforcement officials, circuit court and family court judges, employees of the Division of Juvenile Services and magistrates.¹² The 24-hour hotline number to report child abuse and neglect is the same as the hotline for reporting adult abuse and neglect (800-352-6513).

What are the procedures for making a mandated report?

Reports of abuse or neglect involving an adult who is incapacitated should be made directly to the local DHHR/APS¹³ or the 24-hour hotline that is provided for this purpose—800-352-6513 (use the hotline especially after regular business hours).

FYI—If you are a mandated reporter and suspect abuse or neglect of an adult who is incapacitated, you are required to report to your local DHHR/APS or the state DHHR hotline. If you suspect a crime has occurred, call the local law enforcement agency. If you are not certain of which agency to involve, you can always call law enforcement first. They, in turn, may direct you to DHHR/APS.

FYI—Your obligation to report only needs to be based on a suspicion of mistreatment.

Your suspicion may be based on a disclosure by a victim or your observations of a pattern of indicators associated with mistreatment (e.g., physical signs of a sexual assault, sudden changes in behavior, emotional distress, etc.). It is not your role to verify that mistreatment is occurring or has occurred. If you question whether a report should be made, discuss the circumstances of the case with your supervisor. You can also call DHHR or law enforcement and, without giving the identifying information on the case, describe the situation and ask if it warrants a report. (*See Sexual Violence 101. Indicators of Sexual Violence.*)

When you call DHHR to make a report, you will be asked to provide the following information (to the extent that it is available):

- Name, address and phone number of the victim;
- Identifying information of the victim such as: date of birth, social security number, age and ethnicity;
- Name, address and phone number of the alleged perpetrator;
- Identifying information of the alleged perpetrator, including the nature of the relationship between the victim and the perpetrator;
- Your name, phone number and address (West Virginia permits anonymous reporting; however, it is helpful if the agency receiving the report has your contact information in case additional information is needed);
- Information, if applicable, on the physical, cognitive and emotional functioning of the victim and the perpetrator; and
- The reason for your concern (e.g., type of sexual violence and injuries incurred).

If you do not know the answer to a question, say so. Do not guess.

Do mandatory reporters have any other obligations beyond making a verbal report to DHHR?

Individuals who are mandated to report suspected or known cases of abuse, neglect or emergency situations must follow their initial verbal report to DHHR with a written report. This written report must be submitted to the local DHHR within *48 hours* following the verbal report. Each agency should have a form for reporting to DHHR. A sample *APS Mandatory Reporting Form*, created by DHHR, can be used (a copy of this form can be found at the end of this module).

In addition to the submission of this report to DHHR, the reporter is to distribute copies to various parties, depending on the circumstances of the allegations:

- If the victim is a resident of a nursing home or other residential facility, submit a report to a state/regional ombudsman,¹⁴ the Office of Health Facility Licensure and Certification (OHFLAC)¹⁵ and the facility administrator;
- In the case of the death of the victim, submit a report to the local medical examiner or coroner;

- If abuse or neglect is believed to have been a contributing factor to the death, also submit the report to law enforcement; and
- In the case of a violent crime, sexual assault, domestic violence, murder, etc., submit a report to law enforcement and the prosecuting attorney.

FYI—Beyond sharing copies with the above parties as appropriate given the circumstances of the allegation, DHHR reports of abuse, neglect or emergency situations involving an adult who is incapacitated are confidential (including the identity of the reporter) and are not to be released unless court ordered.¹⁶ If the referent later seeks status information about the case, DHHR can only inform the referent that it “is taking appropriate action.” DHHR cannot tell the referent whether an investigation has been initiated or is underway.

Test Your Knowledge

Refer to the pages in this module as indicated to find the answer to each question.

1. How does West Virginia law define an adult who is incapacitated? *See page B5.1.*
2. Who does West Virginia law identify as mandatory reporters? *See page B5.3.*
3. What agency takes reports of suspected abuse, neglect or emergency situations involving adults who are incapacitated? What is the 24-hour hotline number provided for this purpose? *See page B5.3.*
4. What information is needed to make a report? *See page B5.4.*
5. What obligations do reporters have once a verbal report is filed? *See pages B5.4—B5.5.*

Part 2: DISCUSSION

Projected Time for Discussion

1.25 hours

Purpose and Outcomes

This discussion is designed to help participants apply information presented in *Part 1: Core Knowledge* of this module to their collaborative work with sexual violence victims. The discussion could be incorporated into forums such as agency staff meetings, orientations and continuing education programs, as well as multi-agency meetings or trainings. Anticipated discussion outcomes include an increased understanding of mandatory reporting and related practices and processes in your community.

Refer to the learning objectives at the beginning of this module for specific outcomes for this module.

Planning

- Ensure that the meeting is held at an accessible location. Ask participants prior to the meeting if they need any accommodations—if so, work with them to secure accommodations.
- Select a facilitator. The facilitator should be familiar with mandatory reporting laws related to the sexual assault and sexual abuse of incapacitated adults.

- Select a note taker.
- Participants and the facilitator should review *Part 1: Core Knowledge* of this module before the discussion, as well as the copy of the *APS Mandatory Reporting Form* at the end of the module.
- Each participant should bring to the meeting:
 - A copy of their agency's policy/philosophy regarding mandatory reporting or information describing how the agency promotes compliance with this law, and their agency's APS mandatory reporting form (if different from the one developed by DHHR).
 - A copy of any training materials the agency uses to educate staff on mandatory reporting laws, protocols and policies.
- Bring the following supplies and materials to the meeting: flipcharts and colored markers, blank attendance sheet, sufficient copies of participant materials, office supplies (tape, pens, paper, etc.) and a clock/watch to monitor time. Optional items include name badges or table tents.

Suggested Activities and Questions

1. **Invite participants to identify discussion ground rules to promote open communication.** Utilize the following principles: (*10 minutes*)
 - An environment of mutual respect and trust is optimal. Everyone should feel comfortable expressing their opinions and feelings about the various topics.
 - Avoid personalized comments that are negative as they can lead to defensiveness and confrontation among participants and ultimately may shut down dialogue.
 - Be clear about what information discussed during this meeting is confidential and what the expectations are for confidentiality in the context of this partnership.
2. **Ask a representative from each partnering agency to share the policies, reporting forms and training materials** they brought to the meeting and summarize their contents. (*10 minutes*)
3. **As a large group, discuss the following questions:** (*45 minutes*)
 - a. Why is there a need for mandatory reporting?
 - b. Who are mandatory reporters in West Virginia? Do you identify yourself as a mandatory reporter? What are you mandated to report? What discomfort do you feel, if any, associated with being a mandatory reporter?
 - c. Do procedures for reporting suspected abuse or neglect of an adult who is incapacitated differ across agencies? If yes, how?
 - d. What are the timelines for reporting?
 - e. How can agencies insure that all staff members and volunteers are responding appropriately to reporting mandates?

- f. What strengths and weaknesses exist in the current service delivery systems regarding mandatory reporting that may affect victims of sexual violence?
 - g. What are the some of the ethical issues surrounding mandatory reporting? What are the potential implications or unintended consequences for reporting suspected incidences of sexual violence?
 - h. What policy and/or practice changes can be made within each partnering agency to maximize compliance with this law? What specific steps need to be taken to facilitate those changes?
4. **Closing.** Ask each participant to write down how the information gained from this module discussion will:
- Change the way they interact with individual clients;
 - Change the way they partner with other agencies to assist clients; and
 - Promote change in their agency’s policies, practices or training programs.

Then facilitate a large group discussion on this topic. (10 minutes)

West Virginia Department of Health and Human Resources Adult Protective Services Mandatory Reporting Form

(Use this form to report abuse, neglect or situations that present an immediate risk of serious injury or death - press firmly)

!!(Reporter information is confidential and must be handled accordingly by all recipients of this report)!!

Reporter Information:

Name: _____ (Preferred) Date this report completed: _____
 Address: _____ Telephone #: _____
 Title/Relationship to Victim: _____
 Are you a Mandatory Reporter? Yes _____ No _____

Alleged Victim Information: (Information about person who is being abused/neglected)

Name: _____ Age/Date of Birth: _____
 Address: _____
 Current Location & Directions: _____
 Facility Name: _____ Type of Facility: _____ Describe
 physical/cognitive/emotional functioning of the alleged victim: _____
 Substitute Decision Maker (Type, Name and Address): _____

Alleged Perpetrator Information: (Information about person who is doing the abusing/neglecting of the adult)

Name: _____ Title/Relationship to Victim: _____
 Address: _____ Telephone #: _____
 Describe action(s) taken to prevent further abuse/neglect: _____
 (Mark if additional pages attached)

Allegations: (Information about the incident of abuse, neglect, etc.)

Date of Incident: _____ Time of Incident: _____
 Where incident occurred: _____
 Describe Incident/Injuries: _____

 (Mark if additional pages attached)
 Was treatment outside facility required? Yes _____ No _____ If yes, provider of treatment: _____
 Why is the adult unable to protect her/himself? _____
 How long has the problem existed? _____
 Is anyone else aware of the incident? If yes, list the name(s) & relationship to alleged victim: _____
 Are there witnesses to the incident? If yes, list the name(s) & relationship to alleged victim: _____
 Additional Comments: _____

A copy of this report must be filed with the following parties by the person completing the form (within 48 hours).

- | | |
|--------------------------|---|
| 1. | Original to: Adult Protective Services Unit - local Department of Health and Human Resources |
| 2. | Copy to: |
| <input type="checkbox"/> | Office of Health Facilities Licensure & Certification (if alleged victim is resident of a nursing home or residential facility) |
| <input type="checkbox"/> | State or regional Long-term Care Ombudsman (if alleged victim is resident of a nursing home or residential facility) |
| <input type="checkbox"/> | Facility administrator (if alleged victim is resident of a nursing home or residential facility)** [see instructions on back] |
| <input type="checkbox"/> | Local law enforcement agency (when applicable - e.g. violent crime, domestic violence, serious injury, death) |
| <input type="checkbox"/> | Local prosecuting attorney (when applicable - e.g. violent crime, domestic violence, serious injury, death) |
| <input type="checkbox"/> | Local coroner or medical examiner (in case of a death) |

Instructions for Completing the WVDHHR APS Mandatory Reporting Form

This APS Mandatory Reporting Form was developed by the West Virginia Department of Health and Human Resources (DHHR) as a result of a change to the law during the 2000 session of the West Virginia Legislature. It is to be used by individuals identified as mandatory reporters for reporting Adult Protective Service (APS) situations to the local APS unit and certain other parties.

WHO/WHEN TO COMPLETE:

All individuals identified as *Mandatory Reporters* of abuse and neglect of incapacitated adults and residents of nursing homes or residential facilities are required to complete this form as part of the APS reporting process. Incidents of abuse/neglect must be reported immediately to the Adult Protective Service agency, DHHR. As follow-up to the immediate report, mandatory reporters are required to provide a written report to the local APS unit within 48 hours. This form will serve as the required written report. **Mandatory reporters include:** medical, dental or mental health professionals, Christian Science practitioners, religious healers, state & regional ombudsmen, social service workers, law enforcement officers, county humane officers and any employee of a nursing home or other residential facility.

Complete this report as thoroughly as possible. While anonymous reports will be accepted, the reporter is encouraged to provide information about herself/himself in the event additional information/follow-up is needed. If more space is required, additional pages may be attached. If so, mark the appropriate box to indicate that there is an attachment and on the attached page indicate the section of the form that is being continued. Finally, be sure to include a copy of the attachment with all copies distributed to various parties.

REQUIRED FILING:

The person completing this form is responsible for filing a copy of the completed form with all appropriate parties. The parties who are to receive a copy of the form are determined based on the circumstances of the allegation therefore, it is not necessary to send a copy to all parties in all cases. ****Note: West Virginia state law requires that this form be filed with the APS agency (DHHR) and other parties, including the facility administrator (when applicable), within 48 hours. However, state and federal reporting requirements for facilities that are certified to receive Medicare or Medicaid funds have not changed as a result of implementation of this form. Filing of this form does not replace other applicable reporting requirements.**

The original copy of the form is always to be forwarded to the APS unit of the local DHHR. Filing with other parties should be done according to the guidelines provided in the bottom section of the form (darkened portion). Indicate the party(s) to which a copy of the report has been forwarded by placing a mark in the appropriate box.

Reports that are to be filed with the Office of Health Facilities Licensure & Certification (OHFLAC) and the Long-term Care Ombudsman Program are to be mailed to the appropriate state entity. Reports that are to be filed with the Adult Protective Service agency (DHHR), law enforcement, prosecuting attorney, and coroner/medical examiner are to be sent to the appropriate local entity.

Effective Date:

Use of this form became effective on **June 10, 2000**. On and after June 10, 2000, this form is to be used for the purpose of filing the required written report with the Department of Health and Human Resources and other appropriate parties.

To request additional copies of this form:

Additional copies of this form may be obtained by submitting a written request to the appropriate local DHHR.

Note regarding this form: This form was undergoing revision by DHHR at the time this module was written. Therefore, several alterations were made to the 2000 version of the form that was included in the module to reflect the new changes, namely: the addition of "Mandatory" to the name of the form and the deletion of the mailing addresses for the agencies where written reports are to be sent (as these addresses may change in the updated version).

Project partners welcome the non-commercial use of this module to increase knowledge about serving sexual violence victims with disabilities in any community, and adaptation for use in other states and communities as needed, without the need for permission. We do request that any material used from this toolkit be credited to the West Virginia Sexual Assault Free Environment (WV S.A.F.E.) project, a partnership of the West Virginia Foundation for Rape Information and Services, the Northern West Virginia Center for Independent Living and the West Virginia Department of Health and Human Resources (2010). Questions about the project should be directed to the West Virginia Foundation for Rape Information and Services at www.fris.org.

Funding was provided by Grant No. 2006-FW-AX-K001 awarded by the Office on Violence Against Women, U.S. Department of Justice. The opinions, findings, conclusions and recommendations expressed in this module are those of the authors and do not necessarily reflect the views of the U.S. Department of Justice, Office on Violence Against Women.

¹Partnering agencies refer to the persons they serve as “clients,” “consumers” and “victims.” For convenience, the term “victims” is primarily used in this module. Also note that the terms “sexual violence” and “sexual assault” are generally used in this module to encompass sexual assault, sexual abuse and other forms of sexual violence.

²As per WVC§9-6-9. See <http://www.legis.state.wv.us/WVCODE/Code.cfm> for all code references. Note that this and all other online documents referenced in this module were available at the links provided at the time the module was written. It is suggested you check the sites for any updates or changes. If you experience difficulty accessing the documents via the links, another option for locating the documents is doing a web search using titles.

³As per WVC§9-5-9, “emergency” or “emergency situation” means a situation or set of circumstances which presents a substantial and immediate risk of death or serious injury to an adult who is incapacitated.

⁴Adapted from Wikipedia, http://en.wikipedia.org/wiki/Mandatory_reporting.

⁵The following information on mandatory reporting was excerpted/drawn from the *West Virginia Department of Health and Human Resources Adult Protective Services Manual*.

⁶See WVC§9-6-9, <http://www.legis.state.wv.us/WVCODE/Code.cfm>.

⁷“Many states and territories include Christian Science practitioners or religious healers among professionals who are mandated to report suspected child maltreatment [and often mistreatment of vulnerable adults]. In most instances, they appear to be regarded as a type of health care provider.” *Reporting laws: Clergy as mandated reporter (National Clearinghouse on Child Abuse and Neglect Information, 2003)*, <http://www.churchlawtoday.com/private/library/cltr/rclergyreportinglaws.html>. “Christian Science practitioners provide spiritual treatment through prayer that results in healing.” “Treatment is based on the Bible, and the principles explained in *Science and Health with Key to the Scriptures* by Mary Baker Eddy. Central to this treatment is the idea of one, all-good God, who loves and cares for each of us.” *Healing (Christian Science)*, <http://christianscience.com/>.

⁸WVC§7-10-1: In West Virginia, the sheriff of each county annually designates one of his or her deputies to act as humane officer of the county; or, if the county commission and sheriff agree, the county dog warden may be designated to act as the humane officer or as an additional humane officer. A humane officer investigates complaints of cruel or inhumane treatment of animals within his or her county and enforces the law relating to the prevention of cruelty to animals.

⁹An ombudsman is an advocate for residents of nursing homes, board and care homes, and assisted living facilities. Ombudsmen provide information about how to find a facility and what to do to get quality care. They are trained to resolve problems. The ombudsman can assist residents with complaints. However, unless the resident gives the ombudsman permission to share his/her concerns, these matters are kept confidential. Under the federal Older Americans Act, every state is required to have an ombudsman program that addresses complaints and advocates for improvements in the long-term care system. National Long-Term Care Ombudsmen Resource Center, <http://www.ltombudsman.org/>.

¹⁰WVC§9-6-12 (a): Any person who in good faith makes or causes to be made any report [of mistreatment of an incapacitated adult as defined by West Virginia law] permitted or required by this article shall be immune from any civil or criminal liability which might otherwise arise solely out of making such report.

¹¹For example, there have been instances (1) where victims of domestic violence have lost custody of their children as an indirect result of reporting their victimization to law enforcement; and (2) where victims who are in the country illegally have been deported after a report of abuse. These practices are not typical and are even discouraged in many jurisdictions, but nonetheless, they have occurred.

¹²DHHR website on reporting child abuse and neglect, http://www.wvdhhr.org/bcf/children_adult/cps/report.asp. The list of mandatory reporters for minors is slightly different from that for adults who are incapacitated; each list reflects the helping professionals that typically might have contact with that population.

¹³Go to WV APS, http://www.wvdhhr.org/bcf/children_adult/aps/default.asp, for local DHHR contact information.

¹⁴Call 800-834-0598 to speak with a West Virginia ombudsman. Go to <http://www.wvseniorservices.gov/> and click on “Staying Safe” for a description of the state administered long-term care ombudsman program and to access contact information for ombudsmen.

¹⁵Call OHFLAC at 304-558-0050. Go to <http://www.wvdhhr.org/ohflac/> for more information about this DHHR-administered office.

¹⁶WVC§9-6-8: In addition to DHHR/state protective agencies, these confidentiality requirements are in place for state and regional long-term care ombudsmen, nursing home or facility administrators and OHFLAC.